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JANUARY 1943 TERM

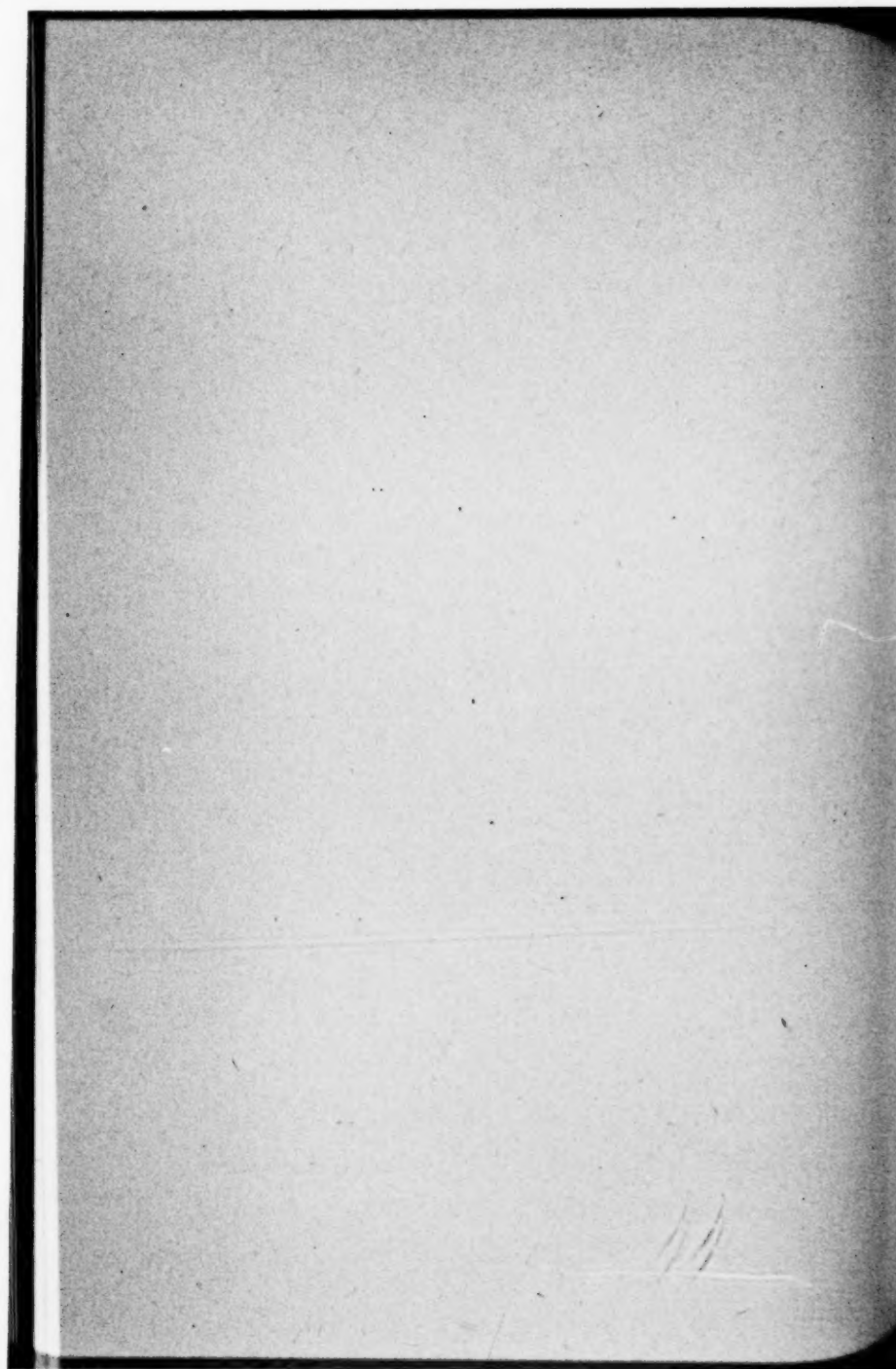
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No.

**THOMAS C. WILCOX, EDDIE WAY, BEN LANDSBERG,
LOUIS ELLIOTT and CLYDE STAMBAUGH,
Petitioners,
vs.
THE PEOPLE OF THE STATE OF MICHIGAN,
Respondent**

**PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE
OF MICHIGAN AND BRIEF IN
SUPPORT THEREOF**

**JOHN J. BRESNAHAN,
Attorney for Petitioners,
Tower Building,
Washington, D. C.**



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(Unless otherwise clearly shown by the context, figures in parenthesis refer to the page numbers of the printed record which is a part of the certified record from the Supreme Court of the State of Michigan.)

To The Supreme Court of the United States of America:

Petitioners herein, Thomas C. Wilcox, Eddie Way, Ben Landsberg, Louis Elliott, Clyde Stambaugh, respectfully represent to this Honorable Court:

I.

That for a short statement and summary of the matters involved, they say:

1. That a document issued out of the Circuit Court for the County of Wayne (R. 28-41) by the Hon. Homer Ferguson, one of the Judges of said Court, sitting as a one-man grand jury, so-called, alleging criminal conspiracy under two counts. The first count was later dismissed during the trial, and the People proceeded to the jury on the second count, that of common-law conspiracy to obstruct justice.

That, thereafter, these defendants were arraigned before the Grand Juror, Judge Ferguson, on the said document, who also conducted the examination and upon completion of said examination, bound them over for trial. Later, an information was filed by the People and other proceedings were had in the Circuit Court for the County of Wayne; and, thereafter, a trial was had in said Court before the Hon. Earl Pugsley, one of the Circuit Court Judges of Michigan, sitting in the Wayne County, Michigan, Circuit, and a jury, and the defendants were, on the 28th day of April, A.D. 1941, found guilty by said jury, as charged (R. 1854-1892), and after denial of a Motion for a New Trial (R. pp. 2017-18), sentence was imposed on petitioners, as follows, on May 14, 1941:

Defendant and petitioner, Thomas C. Wilcox, was thereafter, on the 14th day of May, 1941, sentenced to confinement in the Michigan State Prison at hard labor for a period of not less than four and one-half ($4\frac{1}{2}$) years nor more than five (5) years without recommendation, and fined in the sum of \$2,000.00.

Defendant and Petitioner, Eddie Way, was likewise on the 14th day of May, 1941, sentenced to be confined to

the Michigan State Prison at hard labor for a period of not less than two (2) years nor more than five (5) years; without recommendation and fined in the sum of \$1,000.00. Defendants and petitioners Ben Landsberg, Louis Elliott and Clyde Stambaugh, were on May 14, 1941, each sentenced to be confined in the Michigan State Prison at hard labor for a period of not less than one (1) year, nor more than five (5) years, without recommendation and fined in the sum of \$1,000.00 each.

2. That thereafter, the said cause was transferred to the Supreme Court of the State of Michigan by filing a claim of appeal, pursuant to the regular practice in the State of Michigan, for review by said Supreme Court of errors in the proceedings in the Circuit Court for the County of Wayne; that thereafter, the said Supreme Court of the State of Michigan affirmed the aforesaid conviction; thereafter, the Supreme Court denied a petition for a rehearing; thereafter, Stay of Proceedings were granted to date of February 18, 1943.

3. In this petition, Thomas C. Wilcox, Eddie Way, Ben Landsberg, Louis Elliott and Clyde Stambaugh pray this Court for a Writ of Certiorari directed to the Supreme Court of the State of Michigan to bring the record of proceedings in that Court, into this Court for review of the proceedings in the Supreme Court of the State of Michigan above alleged.

II.

For a statement of the reasons relied on for allowance of a Writ of Certiorari, and disclosing the basis on which it is contended that this Court has jurisdiction to review the determination of the Supreme Court of the State of Michigan, petitioners show:

1. That prior to September, 1940, a petition had been filed by a group of citizens with the Circuit Court for the County of Wayne asking for a grand jury investigation. After a meeting, the Circuit Judges appointed one of their members, Judge Homer Ferguson, to conduct the Grand Jury. The Grand Jury then proceeded to conduct sessions in private offices, hotels, as well as in its regular court room.

After meeting for some time, the Grand Juror returned a document which he claimed was a warrant, and proceeded to arraign these petitioners and others upon same, conducted his own examination, and bound your petitioners over for trial. He, however, did not conduct the actual trial, which was assigned to Circuit Judge Earl C. Pugsley. The said proceedings were alleged to be brought under Sec. 17217 and 17218 of the Michigan Compiled Laws of 1929.

Your petitioners state that they objected to and later filed Motion to Suppress the Information filed in said cause, on the ground that the examining magistrate was the same person who conducted the Court of Inquiry or so-called one-man grand jury, issued the warrants and arraigned your Petitioners on same, and therefore was a violation of their constitutional rights, (Paragraph 2 of Motion to Quash (R. 59)). Also they claimed that they were not given the opportunity to properly examine the witnesses during the examination (see R. 612).

They also objected that Judge Ferguson should have disqualified himself when Motion was made to that effect, on January 3, 1941 (R. 59-60) and denied by trial judge.

Also see paragraphs 11 to 17 of Motion to Quash on behalf of Defendant, Duncan C. McCrea (R. pp. 69-70).

During the trial, petitioners objected to the introduction of alleged prejudicial testimony.

However, the petitioners particularly objected to the violation of their rights under the Constitution of the United States and of the State of Michigan, to their denial of a fair and impartial trial.

On this point, you petitioners claim, amongst others, two particularly glaring violations of their rights:

1. That the jury was permitted to pass on and look over some of the records and testimony of the trial while deliberating, without permission of the Court.

Apropos this incident, the record discloses the following (R. 1890):

"The Court: Members of the Jury, I was advised by Officer Hunter that there was a request from the jury for the testimony of the witness Sam Block. The foreman of the jury may speak for you. Am I correct? advised?"

Foreman Holmes: That is right.

The Court: It has just been called to my attention that in my absence and without any instruction from the Court, that testimony was just handed to you by the officer; is that right?

Foreman Holmes: That is right, your Honor.

The Court: How long ago did this happen?

Foreman Holmes: About ten minutes ago."

2. That the jury which found your petitioners guilty were selected contrary to law, in violation of the statutory and constitutional rights of your petitioners, and made a supplemental motion for a new trial which was denied by the trial court (R. 2013 to 2017).

SUPPLEMENTAL MOTION FOR A NEW TRIAL

Now comes Thomas C. Wilcox, Eddie Way, Ben Landsberg, Louis Elliott, Clyde Stambaugh, the defendants herein, by George S. Fitzgerald and Frank G. Schemanske, their attorneys, and file this, their supplemental motion for a new trial, saving and reserving all rights and benefits of all matters and things and errors claimed in their motion for a new trial heretofore filed for the following reasons:

1. Because these defendants have recently discovered evidence not heretofore available to them that the panel and array of jurors from which the jury was selected and of which they were and are a part, were selected contrary to law and in violation of the statutory and constitutional rights of these defendants.

2. Because these defendants today secured evidence that the jury lists which make up the panel were not made by the Wayne County Jury Commission or any member of said Commission as provided for in Section 13838, Compiled Laws of 1939, but was made up in its entirety by the Secretary of the Jury Commission, one Clarence Shaw, the said Jury Commission having at a prior date attempted to delegate their constitutional and statutory powers and duties to the said secretary, Clarence Shaw.

3. Because the above statute provides that each Jury Commissioner shall make a list of the names of the number of qualified persons apportioned to his district, and these defendants today secured evidence that the said Clarence Shaw made up said lists from a list of registered voters using a so-called key number system, the mechanics of which he alone is familiar with, thereby excluding a large number of qualified jurors who had all

the qualifications as set forth in Section 13841, Compiled Laws, 1929.

4. Because evidence has recently been secured that up to three years ago the Wayne County Jury Commission and each of them did make a list of jurors as provided by law, but that at a meeting of the Jury Commission, they voted and attempted to delegate its constitutional and statutory duties and powers to its said secretary, and that subsequent to that meeting all lists of jurors have been made up by the secretary of the commission, as outlined above, wherefore the file and array and the jury selected therefrom was incorrect, improper and contrary to and in violation of the rights of the defendants.

5. That because the Jury Commission attempted to delegate its powers and duties to its said secretary in that it permitted him to examine and accept or reject prospective jurors called in to fill out questionnaires, and the Commission also failed to file a true list of jurors made by said Commission in the office of the Clerk of the Wayne Circuit Court, as provided by Section 13840, of the Compiled Laws, 1929.

6. Because the Jury Commission completely failed to follow the provisions of the statute as outlined in Section 13483 and the County Clerk, who is Clerk of the Circuit Court for the County of Wayne, was not permitted to write the names of persons selected as jurors on strips of paper and to deposit said strips of paper in the jury box under seal, but, on the other hand, the Commission attempted to delegate its constitutional and statutory powers and duties, and to usurp the powers and duties of the Clerk of the Circuit Court, as above entitled, by permitting the secretary to write the names of the person selected on strips of paper, sealing said strips of paper in

an envelope, and depositing said envelope with the Clerk of the Circuit Court.

7. Because the Jury Commission wholly and completely failed to follow the provisions of the statute as outlined in Section 13848, Compiled Laws, 1929, by its failure to sign the minutes made by the Clerk of the Circuit Court and file same in his office, and the Commission again usurped the powers and duties of the Clerk of the said Court by directing the secretary of the Commission to make out a "venire facias" and deliver the same to the Sheriff of Wayne County, and the said Secretary of the Commission did usurp the duties and powers of the Clerk of the Circuit Court by illegally and unlawfully making out said "venire facias" contrary to the statute as above outlined.

8. That the members of the Wayne County Jury Commission are constitutional officers, as provided in Article 8, Section 6 of the Constitution of the State of Michigan, 1908 and their attempt to delegate the powers and duties prescribed by law was and is an attempt to delegate the powers and duties of constitutional officers.

9. That the neglect and failure to act, as well as the acts performed unlawfully and illegally by said Wayne County Jury Commission, resulted in a panel and array of jurors from which the jury that tried these defendants was selected that was picked contrary to and in violation of the statute, by a person wholly without authority to pick and make up said jury lists, to-wit: the said secretary of the Wayne County Jury Commission, one Clarence Shaw.

10. Each of the foregoing errors alleged in paragraphs 1 to 9, inclusive, constitutes violation of Article 2, Section 16, of the Constitution of the State of Michigan, and of

the due process clause, privilege and immunities clause, and equal protection of the laws clause of the 14th Amendment of the Constitution of the United States, and these defendants are deprived of their rights, guaranteed thereby.

11. That the members of the jury, during the course of the trial, took notes of the testimony, which records were used by the jury during their deliberation and while attempting to reach a verdict in this cause.

Wherefore, these defendants move the Court to set aside the conviction and judgment passed thereon, and to grant these defendants a new trial herein, and, in addition to the facts set up in the defendant's attorneys' affidavit attached hereto, and this Court permit these defendants to subpoena the Secretary of the Wayne County Jury Commission, and the various Commissioners of said body, and the Clerk of the Wayne Circuit Court, and place them under oath for the purpose of completing this defendant's record in connection with this motion.

This motion is based upon the files and records in this cause, and upon the affidavit attached hereto.

(Sgd.) GEORGE S. FITZGERALD,
FRANK G. SCHEMANSKE.

Your petitioners claim that their rights to a fair and impartial trial were violated by the authorities of the State of Michigan, and that the affirmance by the Supreme Court of the State of Michigan, of the sentence imposed upon them on May 14, A.D. 1941, by the Circuit Court for the County of Wayne, deprives these petitioners of titles, rights and privileges, and immunities granted and guaranteed them under:

A. Sec. 1 of the Fourteenth Amendment to the Constitution of the United States of America, that no State shall deprive them of their life, liberty, or property without due process of law, or to abridge the privileges and immunities of citizens of the United States.

B. And a right to trial by an impartial jury guaranteed by Amendments Five and Six of the Constitution of the United States of America.

SUMMARY OF CLAIMS FOR WRIT

Petitioners were denied rights and privileges guaranteed by the due process clause of the Fourteenth Amendment and the Fifth and Sixth Amendments to the Constitution of the United States of America for the following reasons:

A. That your Petitioners were denied their rights to a fair and impartial trial as guaranteed by the Constitution of the United States (Amendments Five, Six and Fourteen), as follows:

1. That the jury which decided their case was illegally drawn and was empanelled in violation of the laws of the State of Michigan.

2. That the jury while deliberating was interfered with by a deputy sheriff attached to the Prosecution and given particular testimony, etc., without the knowledge or consent of the trial judge, rendering a fair and impartial verdict an impossibility.

3. That the proceedings by the one-man grand juror was illegal and unlawful.

4. That your Petitioners were not permitted to be confronted by the witnesses against them.

5. That your Petitioners were not permitted to waive the preliminary examination.

6. That your petitioners were also forced to permit testimony against them of similar offenses by parties who were not named in the conspiracy, either as defendant or co-conspirators.

7. That your petitioners were restricted in the cross-examination of witnesses on their grand jury testimony.

These petitioners further state that the Supreme Court of the State of Michigan, being the highest Court of said State, and it having by its final judgment deprived petitioners of certain titles, rights, privileges, and immunities, guaranteed by Section 1 of the Fourteenth Amendment and Amendments Five and Six to the Constitution of the United States of America, as aforesaid, it is claimed that this Court has jurisdiction of the subject matter herein involved under Section 237 (b) of the Act of Congress of February 13, 1925, Chapter 229, 43 Sta. 936, which is as follows:

“It shall be competent for the Supreme Court, by certiorari to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest Court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States, or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exer-

cised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal Claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph."

Wherefore, petitioners herein, Thomas C. Wilcox, Eddie Way, Ben Landsberg, Louis Elliott and Clyde Stambaugh pray that this Court by its Writ of Certiorari, directed to the Supreme Court of the State of Michigan, require that the records in this cause be certified to this Court for review and determination of the final judgment of that court in said cause.

And petitioners will ever pray, etc.

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